UNITED STATES OF AMERICA DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT OFFICE OF ADMINISTRATIVE LAW JUDGES

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CHARGE OF DISCRIMINATION

I. <u>JURISDICTION</u>

On or about December 7, 2004, Complainant Lee Zachary ("Complainant"), filed a verified complaint with the U.S. Department of Housing and Urban Development (HUD), alleging Respondent Margie Loftus committed a discriminatory housing practice on the basis of race (Black) in violation of Section 3604(a) of the Fair Housing Act as amended in 1988, 42 U.S.C. §§ 3601 *et seq.* (2005) (hereafter, the "Act"). On or about July 25, 2005, the complaint was amended to clarify the allegations and allege Respondent Loftus also violated Section 3604(c) of the Act on the basis of race (Black).

The Act authorizes the issuance of a Charge of Discrimination (Charge) on behalf of an aggrieved person following an investigation and a determination that reasonable cause exists to believe that a discriminatory housing practice has occurred. 42 U.S.C. § 3610(g)(1) and (2) (2005). The Secretary has delegated to the General Counsel (54 Fed. Reg. 13121 (Mar. 30, 1989)), who has redelegated to the Regional Counsel (67 Fed. Reg. 44234 (Jul. 1, 2002)), the authority to issue such a Charge, following a determination of reasonable cause by the Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) or her designee.

By Determination of Reasonable Cause of September 9, 2005, the FHEO Region VII Director, on behalf of the Assistant Secretary for FHEO, has determined that reasonable cause exists to believe that discriminatory housing practices have occurred in this case based on race and has authorized and directed the issuance of this Charge.

II. SUMMARY OF THE ALLEGATIONS IN SUPPORT OF THIS CHARGE

Based on HUD's investigation of the allegations contained in the aforementioned complaint and as set forth in the aforementioned Determination of Reasonable Cause, Respondent is charged with discriminating against the Complainant based on race in violation of 42 U.S.C. §§ 3604(a) and (c) (2005) of the Act as follows:

A. Applicable Federal Law

- 1. It is unlawful to refuse to negotiate for the rental of, or otherwise make unavailable or deny, a dwelling to any person because of race. 42 U.S.C. § 3604(a) (2005); 24 C.F.R. § 100.60 (2005).
- 2. It is unlawful to make any statement with respect to the rental of a dwelling that indicates any preference, limitation, or discrimination based on race, or an intention to make any such preference, limitation, or discrimination.

 42 U.S.C. § 3604(c) (2005); 24 C.F.R. § 100.75 (2005).

B. Background

- 3. Complainant Lee Zachary, Black, is forty-six (46) years old and employed by Plaza Manor in Kansas City, Missouri, as a certified nursing assistant ("CNA") earning approximately \$1,200 per month.
- 4. Respondent Margie Loftus, White¹, has owned and managed rental properties for approximately forty-five (45) years. Currently, Respondent Loftus owns five rental units including a four-plex located in Roeland Park, Kansas, and a single-family home located in Kansas City, Missouri.
- 5. The subject property is located at 4718 Mission Road, Roeland Park, Kansas (Johnson County) and is a unit at the four-plex owned by Respondent Loftus. Each of the four units has one bedroom and the rent is \$450 per month. Respondent Loftus has owned and rented out the property for seven (7) years. Respondent does not reside at the four-plex.
- 6. Complainant hoped to move from his current apartment located in Wyandotte County, Kansas, to Johnson County, Kansas, because Johnson County offered free transportation to work for persons with a disability. The lease at Complainant's present apartment was set to expire on November 30, 2004, and he was not planning to renew the lease.
- 7. In approximately early to mid November 2004, a friend of the Complainant, Vicki Distefano-Perbeck, and Complainant discussed the availability of the subject property.

¹ Respondent identified herself as Hispanic on her HUD questionnaire signed and dated January 10, 2005, but indicated in a HUD interview she was White.

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- 8. Complainant was scheduled to visit his children in Lawrence, Kansas, before the Thanksgiving holiday (November 25, 2004) and did not want to lose the opportunity of securing housing that was located in Johnson County. As a result, Complainant asked Ms. Distefano-Perbeck to call about the apartment on his behalf, schedule an appointment to see the apartment, and let him know what she thought of the apartment.
- 9. Complainant gave Ms. Distefano-Perbeck permission to negotiate on his behalf if she liked the property. Complainant asked Ms. Distefano-Perbeck to inform the property owner that he could meet the property owner on the following Monday and could provide a security deposit and the rent at that time.
- 10. As directed, Ms. Distefano-Perbeck called Respondent to schedule a viewing of the apartment. Respondent inquired whether the apartment was for Ms. Distefano-Perbeck. Ms. Distefano-Perbeck specifically informed Respondent Loftus that she was viewing the apartment for a friend who would not be present for the viewing. Ms. Distefano-Perbeck arranged to meet Respondent Loftus at the property on or around November 20, 2004, at 11:30 a.m.
- 11. On or around Saturday, November 20, 2004, Ms. Distefano-Perbeck arrived to view the apartment and met with Respondent Loftus and Robert Loftus, a Hispanic/White male, Respondent Loftus' son. Mr. Loftus did not make any comments during the viewing. All three walked from room to room. At some point during the viewing, Mr. Loftus remained in the bedroom.
- 12. Ms. Distefano-Perbeck and Respondent Loftus talked about what Complainant did for a living, and Ms. Distefano-Perbeck informed Respondent that Complainant was dependable, reliable and had lived in his present apartment for fifteen (15) years.
- 13. After Ms. Distefano-Perbeck viewed the apartment, she commented to Respondent Loftus that she thought Complainant would like the apartment and would want to move in. Ms. Distefano-Perbeck told Respondent Loftus that Complainant could meet with her on Monday (November 22, 2004) to pay her the deposit and first month's rent.
- 14. Respondent Loftus asked whether Complainant smoked or had pets to which Ms. Distefano-Perbeck replied no. Respondent Loftus then asked if the Complainant was Black. Ms. Distefano-Perbeck replied yes.
- 15. Respondent Loftus replied that she could not rent to a Black person because her other tenants would move out and the apartments were her only source of income. Respondent further stated the law does not require her to rent to Blacks because the law did not apply to her property.

- 16. Ms. Distefano-Perbeck informed Respondent Loftus that her grandmother, for whom Complainant provided nursing care, was ninety-nine (99) years old and really liked the Complainant because he took good care of her.
- 17. Respondent Loftus commented the neighborhood was going down because a Black beauty shop (Exotic African Hair Braiding) located on the corner (4700 Mission Road, Shawnee Mission, Kansas) braided hair for Black people and Black people were starting to come into the neighborhood.
- 18. Ms. Distefano-Perbeck told Respondent Loftus that she would feel differently about renting to Complainant if she met him. Ms. Distefano-Perbeck indicated the Complainant was a very nice, soft-spoken, pleasant and likable person. Again, Respondent Loftus responded that she could not rent to Blacks and did not offer Ms. Distefano-Perbeck a rental application.
- 19. Though Ms. Distefano-Perbeck was concerned about Complainant's feelings and potential reaction, she informed him of her meeting with Respondent Loftus. Ms. Distefano-Perbeck told the Complainant about viewing the apartment and informed him Respondent Loftus did not want to rent to the Complainant because he was Black. Complainant indicated he would give Respondent a call to see if Respondent would rent to him.
- 20. On or around November 22, 2004, Complainant called Respondent Loftus and spoke with her by telephone. Complainant told Respondent he wanted to rent the apartment and agreed to meet Respondent Loftus at the subject property on or around November 23, 2004. Respondent told Complainant she would call him back at 10:30 a.m. the next day to schedule a time. Respondent Loftus called Complainant back later the same day, on or around November 22, 2004, to ask him if he had pets or smoked, to which Complainant responded no.
- 21. When Complainant did not hear from Respondent Loftus at 10:30 a.m. the next day, as previously scheduled, Complainant called Respondent and she informed him she was having car trouble and would not be able to keep the appointment. The viewing was rescheduled for November 24, 2004, and Respondent Loftus was supposed to call the Complainant at 10:30 a.m. on that day with an appointment time.
- 22. When Respondent Loftus again failed to call Complainant at 10:30 a.m. the following day, as agreed, Complainant attempted to call the Respondent at approximately 1:00 p.m., and she did not answer the telephone. After making several calls to Respondent and sensing she was intentionally avoiding his call, Complainant subsequently dialed "star 67" and the Respondent's telephone number, which would keep his telephone number from being identified by a caller identification service. Respondent Loftus answered her telephone.

- 23. During the telephone conversation, Respondent Loftus informed Complainant that she was eighty (80) years old and the Complainant was putting her under a lot of stress. During the telephone call, Respondent Loftus made it clear she would not rent to Complainant. Complainant did not ask for an application, and Respondent Loftus did not offer him one. The apartment remained available.
- 24. Respondent Loftus has not rented to a Black residential tenant for over forty (40) years.

C. Fair Housing Act Violations

- 25. By refusing to rent to or offer Complainant or Ms. Distefano-Perbeck an application and refusing to negotiate for the rental of the subject property, Respondent denied or otherwise made housing unavailable to Complainant based on race in violation of 42 U.S.C. § 3604(a) (2005); 24 C.F.R. § 100.60 (2005).
- 26. By stating she could not rent to a Black person because her other tenants would move out and further stating the neighborhood was going down because a local beauty shop braided hair for Black people, Respondent made discriminatory statements with respect to the rental of a dwelling that indicated a preference, limitation, or discrimination because of race, or an intention to make any such preference, limitation, or discrimination in violation of 42 U.S.C. § 3604(c) (2005); 24 C.F.R. § 100.75 (2005).
- 27. As a result of Respondent's actions, Complainant suffered damages, including mental, physical and emotional distress, economic loss and inconvenience. Respondent's discriminatory conduct made Complainant feel mentally and physically stressed and Complainant indicated that stress causes him to have a seizure given his disability. Complainant felt depressed when Ms. Distefano-Perbeck told Complainant the Respondent would not rent to him because he was Black. Complainant further indicated that he lost wages as Complainant would have earned \$12-\$13 per hour as a CNA living in Kansas compared to the \$9 per hour he currently earns. Additionally, Complainant was unable to receive free or reduced transportation services offered in Johnson County, so he continues to pay for transportation. The subject property was also desirable because of the location of a grocery store across the street.

III. CONCLUSION

WHEREFORE, the Secretary of HUD, through the Office of the General Counsel, and pursuant to 42 U.S.C.§ 3610(g)(2)(A) (2005) of the Act, hereby charges Respondent with engaging in discriminatory housing practices in violation of Sections 3604(a) and 3604(c) of the Act, and prays that an order be issued that:

1. Declares the discriminatory housing practices of the Respondent, as set forth above, violate the Act, 42 U.S.C. §§ 3601 *et seq.* (2005);

- 2. Enjoins Respondent, her agents, employees, and successors, and all other persons in active concert or participation with her from discriminating because of race against any person in any aspect of the sale or rental of a dwelling;
- Awards such damages as will fully compensate the Complainant for his mental, physical and emotional distress, economic loss and inconvenience caused by Respondent's discriminatory conduct pursuant to 42 U.S.C. § 3612(g)(3) (2005); and
- 4. Awards in vindication of the public interest, an \$11,000 civil penalty against Respondent for each violation of the Act Respondent is found to have committed pursuant 42 U.S.C. § 3612(g)(3) (2005).

The Secretary of HUD further prays for additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3) (2005).

Respectfully submitted,

Thomas J. Coleman
Regional Counsel, Region VII

Gayle E. Bohling Deputy Regional Counsel, Region VII

Alphonso L. Eason, Attorney-Advisor U.S. Department of HUD Region VII Office of Counsel 400 State Avenue, Room 200 Kansas City, KS 66101-2406 Telephone: (913) 551-5442

Fax: (913) 551-5857

Date: September 13, 2005